

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

A district court may consider, on its own initiative, whether a habeas action is barred by the statute of limitations. *Day v. McDonough*, 547 U.S. 198, 210 (2006). However, before dismissing a habeas action as time-barred, the court must provide notice to the movant. *Id.*


A review of the instant motion indicates that it is time-barred under 28 U.S.C. § 2255 and is subject to summary dismissal. An unappealed criminal judgment becomes final for purposes of calculating the time limit for filing a § 2255 motion when the time for filing a direct appeal expires. *See Anjulo-Lopez v. United States*, 541 F.3d 814, 816 n.2 (8th Cir. 2008). In the case at bar, the judgment became final on January 26, 2016, fourteen days after judgment was entered. *See* Fed. R. App. Proc. 4(b)(1). Therefore, the one-year limitations period of § 2255 expired on January 26, 2017. Movant placed the instant motion in the prison mail system on September 10, 2018, more than two and one-half years after judgment became final. Therefore, it appears the motion is time-barred, and movant will be directed to show cause why it should not be summarily dismissed.

Accordingly,

IT IS HEREBY ORDERED that movant shall show cause, in writing and no later than twenty-one (21) days from the date of this Order, why the instant § 2255 motion should not be dismissed as time-barred.

Movant's failure to timely comply with this Order shall result in the dismissal of this case, without prejudice and without further notice.

Dated this 20th day of September, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE